

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALICIA BELTRAN,

Petitioner,

v.

Case No. 13-cv-1101

JAMIE LOEHNIS, et al.,

Respondents.

**MOTION FOR EXTENSION OF TIME TO FILE
RESPONDENT BENSEN'S MOTION TO DISMISS AND TO MODIFY THE
RULE 4 SCHEDULING ORDER**

Respondent Mark D. Bensen, by undersigned counsel, asks this court for an order allowing a 14-day extension of time to respond to petitioner Alicia Beltran's petition for writ of habeas corpus. Respondent Bensen also requests an order modifying the Rule 4 scheduling order in this case. Accordingly, respondent Bensen asks this court to set a due date of Friday, November 8, 2013, for him to file a motion to dismiss and supporting brief. The grounds for this motion are as follows:

1. Assistant Attorneys General Blythe and Burgundy (undersigned co-counsel) are representing respondent Mark D. Bensen in this matter.

2. Petitioner Beltran filed her petition for writ of habeas corpus and supporting memorandum with this court on September 27, 2013 (Dkt. 23). The petition named five different respondents. Pursuant to the Rule 4 order, this court ordered “the respondent” to file an answer or motion to dismiss and supporting briefs within 14 days of the date of service of the order and petition (Dkt. 23). Respondent Bensen was served with the order on October 11, 2013, which makes respondent Bensen’s responsive pleading due on Friday, October 25, 2013.

3. This is undersigned co-counsel’s first request for an extension of time on this case.

4. Petitioner Beltran raises eight grounds for relief and has filed a 65-page brief and many more pages of exhibits in support of her petition. Due to the tight 14-day deadline in this case, undersigned co-counsel are seeking further extensions in previously assigned (and previously extended) cases in order to promptly respond to petitioner’s concerns. Accordingly, we have begun reviewing the materials and at this point anticipate filing a motion to dismiss. However, due to the unique nature of this petition and underlying case, the number of issues raised, and the length of the supporting memorandum, we will need additional time to further review the materials provided with the petition, review the state court filings and

materials, and prepare a supporting brief for respondent Bensen's motion to dismiss.

5. In addition, Assistant Attorney General Blythe's work on this case will also be delayed by his absence from the office from October 23 through October 28 to attend to an ill family member.

6. Petitioner has alleged that she is being held in state custody at Casa Clare Women's Facility in Wisconsin pursuant to a commitment order under Wis. Stat. § 48.133. Respondent Bensen understands that the accelerated schedule set in this case was enacted due to petitioner's alleged custody while awaiting a trial on her CHIPS petition. However, as of October 4, 2013, petitioner Beltran is not in state custody. Further, the CHIPS petition remains pending in state court, with the next event being a status hearing scheduled to occur on October 28, 2013. Respondent Bensen attaches a declaration and exhibits supporting those assertions as Exhibit A.¹

7. Therefore, because petitioner is not currently in custody and will not be during the additional requested two-week extension period, and because information from the October 28 hearing may be material to the

¹ In paragraph 11 of his declaration, Bensen references a discharge summary from Casa Clare. Undersigned co-counsel have not attached a copy of that summary because they need additional time to review what, if any, information they may need to redact from it. Accordingly, they have not attached that exhibit to this motion but will provide a redacted version to this court if it believes that it is necessary to assess this motion.

federal habeas proceedings, the urgency that required the accelerated schedule in the first instance is no longer present and Ms. Beltran will not be prejudiced by requested extension.

8. Given the foregoing, the proposed enlargement of time reflects our best estimate of the time reasonably necessary for the completion of a motion to dismiss and supporting brief by respondent Bensen to Ms. Beltran's petition. To the extent possible, we will make every effort to file our motion before the requested due date.²

9. In addition, co-counsel request on behalf of respondent Bensen a modification to the current Rule 4 order. This case was originally assigned to Magistrate Judge Goodstein but has subsequently been reassigned to Judge Clevert. The original Rule 4 order in this case anticipates that if respondent Bensen filed a motion to dismiss with a supporting brief, petitioner Beltran would have an opportunity to file a "reply" (Dkt. 23).

10. Typically, in federal habeas proceedings, if the respondent files a motion to dismiss with a supporting brief, the petitioner will have the

² To be clear, we are requesting this extension only on behalf of respondent Bensen. We note that there are four other respondents named in the petition who have other undersigned counsel. Because there are typically not multiple parties with multiple attorneys in federal habeas proceedings, we are unsure whether the court will prefer to extend the briefing schedule for all respondents or will require input from the other respondents in order to grant the extension. If this court requires undersigned co-counsel to provide more information on the other respondents' positions on this request, we will solicit it from the other respondents.

opportunity to file a brief in opposition to the motion and the respondent will then have an opportunity to file a reply brief, if any.

Given that, respondent Bensen asks this court to modify the Rule 4 order in this case and set the following schedule:

Respondent Bensen shall file a motion to dismiss by Friday, November 8, 2013. Petitioner Beltran shall file a brief in opposition, if any, within 14 days of the filing of Respondent Bensen's motion to dismiss. Respondent Bensen shall then have 7 days following the filing of Ms. Beltran's opposition brief within which to file a reply brief, if any.

FOR THE REASONS STATED ABOVE, co-counsel for respondent Bensen respectfully moves this court for an order extending their time for filing a responsive pleading and modifying the Rule 4 scheduling order in this case.

Dated this 23rd day of October 2013.

J.B. VAN HOLLEN
Attorney General of Wisconsin

/s/Christopher J. Blythe
CHRISTOPHER J. BLYTHE
Assistant Attorney General
State Bar #1026147

/s/Sarah L. Burgundy
SARAH L. BURGUNDY
Assistant Attorney General
State Bar #1071646

Attorneys for Respondent Mark Bensen

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8118 (Burgundy Phone)
(608) 266-9594 (Burgundy Fax)
burgundysl@doj.state.wi.us
(608) 266-0180 (Blythe Phone)
(608) 267-2223 (Blythe Fax)
blythecj@doj.state.wi.us